

Charles Stanley Bangert, Jr., ) Civil Action No. 6:17-2551-RMG  
)  
Plaintiff, )  
)  
v. ) **ORDER AND OPINION**  
)  
Jackie Awai *and* Southern Health, )  
)  
Defendants. )  
)

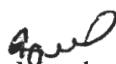
Plaintiff filed this action on September 19, 2017. On February 8, 2018, Defendants moved for summary judgment and the Court issued a *Roseboro* order directing Plaintiff to respond. That order was mailed to Plaintiff but was returned as undeliverable. On March 13, 2018, the Magistrate Judge recommended summary dismissal under Rule 41(b). Again, Plaintiff has not responded. Public records show that Plaintiff bonded out of the Cherokee County Detention Center on or about


January 10, 2018. Plaintiff has not provided the Court his current address, and so neither the Court nor Defendants have any means to communicate with Plaintiff.

Although the Report and Recommendation does not explicitly state whether the complaint should be dismissed with or without prejudice, its recitation of the four factors the Fourth Circuit provides for dismissal with prejudice and its application of those factors implies the recommendation is for dismissal with prejudice. (Dkt. No. 37 at 2–3 (citing *Davis v. Williams*, 588 F.2d 69, 70 (4th Cir. 1978).) The Court agrees that dismissal is appropriate, but declines to dismiss with prejudice. In *Davis*, the Fourth Circuit cautioned “dismissal with prejudice is a harsh sanction which should not be invoked lightly in view of the sound public policy of deciding cases on their merits.” 588 F.2d at 70 (internal quotation marks omitted). The Court finds that dismissal with prejudice of Plaintiff’s claims would be an unnecessarily harsh sanction for his failure to update his address with the Court within two months of his release from jail. In this case, there is no “‘drawn out history’ of ‘deliberately proceeding in a dilatory fashion;’” and dismissal without prejudice is an available and effective sanction less drastic than dismissal with prejudice. *Id.*

The Court therefore **ADOPTS IN PART AND DECLINES TO ADOPT IN PART** the Report and Recommendation of the Magistrate Judge (Dkt. No. 37) as the Order of the Court. The Court **DECLINES TO ADOPT** the Report and Recommendation insofar as it recommends dismissal with prejudice; the Court otherwise **ADOPTS** the Report and Recommendation. The complaint is **DISMISSED WITHOUT PREJUDICE**.

**AND IT IS SO ORDERED.**

  
March 2, 2018  
Charleston, South Carolina

  
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Richard Mark Gergel  
United States District Court Judge